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Filing date: **08/05/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92063448
Party	Plaintiff La Terra Fina USA, Inc.
Correspondence Address	KAYLA JIMENEZ TECHLAW LLP PO BOX 1416 LA JOLLA, CA 92037 UNITED STATES kayla@techlawllp.com, dana@techlawllp.com
Submission	Other Motions/Papers
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Signature	/Kayla Jimenez/
Date	08/05/2016
Attachments	Opposition to Respondent Motion to Set Aside Default Judgment.pdf(198730 bytes) Declaration of Dana Robinson and Exhibits.pdf(1454381 bytes) Declaration of Kayla Jimenez and Exhibits.pdf(4370798 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

La Terra Fina USA, Inc.)	
)	
A Delaware Corporation)	
)	Cancellation No.: 92063448
Petitioner,)	
)	
v.)	
)	Registration No.: 3810927
Cormorant Group LLC)	Date of Issue: June 29, 2010
)	
A New York Corporation)	
)	
Respondent.)	
_____)	

OPPOSITION TO RESPONDENT'S MOTION TO SET ASIDE DEFAULT JUDGMENT

Petitioner La Terra Fina USA, Inc. (“Petitioner”) hereby responds to and formally opposes the Motion to Set Aside Default Judgment filed by Respondent, Cormorant Group LLC (“Respondent”). Pursuant to the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”), Trademark Federal Statutes and Rules (“TFSR”) and the Federal Rules of Civil Procedure, Petitioner respectfully submits that Respondent’s motion is without merit and asks the Board to deny the Respondent’s motion.

I. INTRODUCTION

Respondent's motion has several flaws, but the greatest is that Respondent admits that it willfully and negligently failed to change its address with the USPTO (if it did indeed move addresses) after claiming it moved over five years ago. Respondent also likely knew of the cancellation proceeding, as it knew it had a dispute with Petitioner, and also knew to renew its trademark during the time the cancellation proceeding was pending. Respondent is asking for a

second bite at the apple at Petitioner's expense, after stringing Petitioner along for months and lying about breaching its agreement with Petitioner.

Moreover, Petitioner should not be punished for following the rules of the Trademark Trial and Appeal Board (the "Board"). Petitioner strictly complied with the rules regarding service on Respondent. The Board's rules require service on Respondent at Respondent's address of record with the USPTO. As such, Petitioner served Respondent at the address of record for Respondent, which was listed with the USPTO. This address is also still Respondent's current address as listed with the New York Secretary of State. Moreover, Respondent's claims that it was "unaware" of this proceeding are highly suspect. In any event, Respondent is at fault here, and should not be allowed a second chance when it was clearly aware that it owned a trademark registration, and that the Petitioner was in dispute with Respondent over the Respondent's use of that trademark. It would be unfair to punish Petitioner for Respondent's willful and negligent conduct.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Petitioner is the owner of the LA TERRA FINA trademark and corresponding federal registration (Reg. No. 3953482) and pending application (serial No. 86769705). Petitioner began using LA TERRA FINA as early as 1991 for various food items, including dips, pesto sauce, and quiche.

Respondent, Cormorant Group LLC, was the owner of the federal trademark registration for TERRAFINA (Reg. No. 3810927). Respondent claimed its date of first use was January 2006, well after Petitioner began using its mark in commerce. *See* Respondent's trademark application for Reg. No. 3810927. Until June 29, 2016, Cormorant Group LLC's address of record with the USPTO was 204 28th Street Brooklyn, New York, 11232. *See* Respondent's

Declaration of Use and/or Excusable Nonuse of Mark in Commerce under Section 8 dated June 29, 2016. On June 29, 2016 (after the filing and service of this cancellation), Cormorant Group LLC updated its address of record with the USPTO to 1610 Bathgate Avenue, Bronx, New York, 10457. However, the current address for service of process for Cormorant Group on the New York State Department of State website is 204 28th Street, Brooklyn, New York, 11232. *See* Kayla Jimenez Declaration ¶ 10, Exhibit C.

It is evident from the USPTO's records that Petitioner and Respondent have a history. On March 26, 2008, Petitioner filed an opposition against Respondent's then pending application for TERRAFINA (Serial No. 78929735). This opposition was resolved via settlement, and both parties signed a settlement agreement on November 18, 2010 ("Settlement Agreement"). Then, in late 2015, Petitioner discovered Respondent was breaching the Settlement Agreement by selling veggie chips on various websites, including but not limited to amazon.com and terrafina.us. *See* Declaration of Dana Robinson ¶ 2. On January 4, 2016, Petitioner sent a letter via certified U.S. mail notifying Respondent that it was in violation of the terms of the Settlement Agreement. *See* Declaration of Dana Robinson ¶ 3, Exhibit 1. The Settlement Agreement required notice of breach to be sent to Cormorant Group LLC at 204 28th Street, Brooklyn, New York, 11232. *Id.* Thus, Petitioner sent the letter to that address. *Id.*

On January 26, 2016, Petitioner sent another letter regarding Respondent's breach to the owner of the terrafina.us website, Terrafina LLC. *See* Declaration of Dana Robinson ¶ 4, Exhibit 2. Petitioner is unaware of the relationship between Terrafina LLC and Cormorant Group LLC. The New York Secretary of State's website shows that Terrafina LLC and Cormorant Group LLC are two separate entities, and there was no mention of Cormorant Group LLC on any of the contents on Terrafina LLC's website. *See* Declaration of Dana Robinson ¶ 5, Exhibit 3; *see*

Declaration of Kayla Jimenez ¶¶ 10-11, Exhibits C & D. However, in the interest of trying to resolve the unauthorized use, the January 26, 2016 letter was sent to the contact listed under the “contact us” tab of terrafina.us at 1610 Bathgate Avenue, New York, 10457. *Id.*

In early February, attorney for Petitioner received several missed calls from the Respondent. *See* Declaration of Kayla Jimenez ¶ 2. After unsuccessfully attempting to connect with Respondent via the telephone, attorney for Petitioner spoke with the secretary for Mr. Locke, the president of Respondent. *See* Declaration of Kayla Jimenez ¶ 3. The secretary would not give Petitioner's attorney Mr. Locke's email address so that the parties could set up a telephone conference. However, the secretary requested that Petitioner's attorney email the request for a telephone conference to the secretary, so that she could forward the email to Mr. Locke. *Id.* Thus, on February 9, 2016, attorney for Petitioner emailed the secretary for Mr. Locke, the president of Cormorant Group LLC, to request a phone conference with the Mr. Locke. *See* Declaration of Kayla Jimenez ¶ 2 - 3, Exhibit A. Neither Mr. Locke nor any other agent of the Respondent replied to this email. *Id.*

Due to Respondent's unresponsiveness and failure to cure its breach of the Settlement Agreement, Petitioner filed this Petition for Cancellation on March 29, 2016. *See* Declaration of Kayla Jimenez ¶ 4. On the same day, notice of Petitioner's Petition for Cancellation was served via certified U.S. mail to Cormorant Group LLC's correspondence address of record in the USPTO at 204 28th Street, Brooklyn, New York, 11232. *See* Declaration of Kayla Jimenez ¶ 5. On March 31, 2016, the USPTO also sent notice of Petitioner's petition for cancellation to the correspondence address of record at 204 28th Street, Brooklyn, New York, 11232. *See* USPTO Cancellation Notice dated March 31, 2016.

On April 18, 2016, Mr. Locke initiated contact with an attorney for Petitioner via phone,

claiming Respondent was not in violation of the Settlement Agreement. *See* Declaration of Kayla Jimenez ¶ 6. Attorney for Petitioner requested confirmation in writing from Respondent that the veggie chips were longer being sold. *Id.* However, Respondent did not provide such confirmation in writing. Petitioner also discovered that Mr. Locke had not told the truth because the chips were still being sold on Amazon.com. *See* Declaration of Kayla Jimenez ¶ 8, Exhibit B.

On May 21, 2016, the Board issued a notice of default to Respondent because no answer had been filed.

Respondent was aware that a Declaration of Use under Section 8 was due no later than June 29, 2016. *See* Declaration of James Locke at ¶ 10. On June 29, 2016, Ira E. Silfin entered as Respondent's new counsel for its trademark. *See* Declaration of James Locke at ¶ 5. On the same day, current counsel for Respondent entered and filed Respondent's Declaration of Use under Section 8 with the USPTO. On June 30, 2016, the Board granted Petitioner's petition by order of default judgment and the Respondent's mark was cancelled.

On July 20, 2016, current counsel for Respondent filed a motion for relief from entry of default judgment with the USPTO. Respondent, however, violated and continues to violate the terms of the Settlement Agreement by selling and displaying "veggie chips" and "salted sesame sticks" under the TERRAFINA brand. *See* Declaration of Kayla Jimenez ¶ 8, Exhibit B.

III. ARGUMENT

Default Judgment is proper when a party fails to file an answer to a complaint within the time allowed. TBMP § 312.01; *see* Fed. R. Civ. P. 55. The standard for setting aside such default judgment is stricter than the standard for setting aside a notice of default and reflects public policy favoring finality of judgments. TBMP § 312.03. Relief from a final judgment is an extraordinary remedy that is only granted in exceptional circumstances for reasons including:

mistake, inadvertence, surprise, or excusable neglect. Fed. R. Civ. P. 60(b); TBMP § 544 (emphasis added). None of these circumstances apply here, as Respondent's failure to respond to the Petition for Cancellation was due to Respondent's willful and negligent behavior. There was no mistake, inadvertence, surprise or excusable neglect in the Respondent's failure to update its information, or diligently manage its trademark. In fact, Respondent had an attorney of record for the trademark and must have had plenty of notice prior to June 29th 2016 that the mark was due for renewal, and likely that the mark was subject to cancellation proceedings.

Further, in determining a motion to vacate a default judgment for failure to answer a complaint, the Trademark Trial and Appeal Board ("TTAB") considers: (1) Whether the plaintiff will be prejudiced; (2) Whether the default was willful; and (3) Whether the defendant has a meritorious defense to the action. TBMP § 312.03. Accordingly, the TTAB is reluctant to grant a motion to set aside default judgment when the Petitioner is substantially prejudiced, the Respondent's conduct was willful, or the Respondent's defense is without merit. *Id.* As discussed in detail below, Respondent fails to meet each of these three criteria for setting aside the judgment. In addition, the rules of the TTAB clearly indicate that Respondent must be served at the address on record with the USPTO. TFSR § 2.111(b); TBMP § 309.02(c)(2). Petitioner served Respondent at its address of record as listed on the USPTO. Respondent is the one responsible for failing to update this address, if Respondent did in fact move addresses. Of course, in this case, that very address is still the address of record for the Respondent with the New York Secretary of State, and therefore even now is the legal address for service on the Respondent. The only reason that Respondent cries foul over the address is that it has no other excuse for failing to answer the petition in a timely manner. For these reasons, Petitioner respectfully maintains Respondent's motion should be denied.

- A. The TTAB should deny Respondent's motion to set aside default judgment because the Petitioner would be substantially prejudiced if the TTAB reopened this cancellation proceeding.

Petitioner has made every effort to inform the Respondent of its breach of the Settlement Agreement since January 2016, and has allowed more than the necessary time for Respondent to cure the breach. Respondent failed to cure its breach, and thus, Petitioner filed this cancellation. Petitioner then served Respondent according to TFSR § 2.111(b) and TBMP § 309.02(c)(2) at 204 28th Street Brooklyn, New York, 11232, the address listed on record with the USPTO at the time of the filing. This address, coincidentally, is also the current address listed on the New York State Department of State website for Respondent. *See Declaration of Kayla Jimenez ¶ 10, Exhibit C.*

Although Respondent failed to answer the petition for cancellation by May 10, 2016, Respondent was aware the TERRAFINA trademark needed to be renewed by June 29, 2016, and was able to hire a new attorney in time to renew its mark. *See Declaration of James Locke ¶ 5 & 10.* Moreover, in spite of this ongoing dispute, Respondent continues to sell “veggie chips” and “salted sesame sticks” under the TERRAFINA brand in violation of the Settlement Agreement. *See Declaration of Kayla Jimenez ¶ 8, Exhibit B.*

Respondent’s actions are damaging Petitioner and causing harm to Petitioner’s brand. Petitioner’s LA TERRA FINA trademark has priority over Respondent’s mark, and if this proceeding were to be opened, Petitioner may have to contend with another similar mark owned by someone who breached their Settlement Agreement and lied to Petitioner about continuing to sell the chips. Petitioner has also relied upon the fact that Respondent's trademark registration is cancelled, and if this proceeding were to be re-opened, Petitioner may have to compete with a

federally registered mark which is not only similar to its own, but which was only registered pursuant to a mutual consent agreement signed by Petitioner. Further, Petitioner's pending La Terra Fina application was blocked based on Respondent's mark, and re-opening this proceeding may harm Petitioner's chances of receiving a registration. Given the following, it is clear Petitioner will be prejudiced if this proceeding is re-opened.

B. The TTAB should deny Respondent's motion to set aside default judgment because Respondent's failure to file an answer to Petitioner's petition for cancellation was a result of willful conduct and gross negligence.

Respondent's delay in filing must not be the result of willful conduct or gross neglect in order to show good cause for setting aside a default judgment. TBMP § 312.03; *Delrome Publ'g Co. v. Eartha's, Inc.*, 60 USPQ2d 1222 (TTAB 2000). Respondent's failure to answer Petitioner's petition for cancellation was a result of willful conduct and gross negligence because not only did the Respondent likely know about the cancellation proceeding, it also deliberately avoided communication with Petitioner and failed to update its address with the USPTO despite claiming it moved to its current address in 2011. *See* Declaration of James Locke ¶ 7. The USPTO presumes that the Respondent received a copy of the institution order if it was not returned to the Office as undeliverable. As noted above, the address where the Respondent was served is still the address listed for the Respondent on the New York Secretary of State's website. *See* Declaration of Kayla Jimenez ¶ 10, Exhibit C. Therefore, if the address is valid, then the entire motion to set aside the default is a sham. If the address is wrong, then there is gross negligent and willful conduct because the Respondent has still not changed its address for service of process and negligently delayed updating its address with the USPTO.

On March 29, 2016, pursuant to TFSR § 2.111(b), Petitioner served notice of its petition

for cancellation to Respondent, Cormorant Group LLC, at its address of record with the USPTO at 204 28th Street Brooklyn, New York, 11232. On March 31, 2016, the USPTO also sent Respondent's copy of the institution order to the correspondence address of record at 204 28th Street, Brooklyn, New York, 11232. Petitioner was never contacted by the USPTO regarding any undeliverable notices for its petition for cancellation. The Respondent also does not contend that it did not receive notice of the cancellation proceeding from the USPTO. Given that Petitioner and the USPTO sent notice to the same address, Respondent is inherently arguing that it did not receive proper service from the USPTO as well. If the respondent's copy of the institution order was not returned as undeliverable, it is presumed to have been received by the respondent. *Careerxchange Inc. v. Corpnet Infohub Ltd.*, 80 USPQ2d 1046 (2005). Thus, it is presumed that Respondent received notice of the cancellation.

Interestingly, the declaration of James Locke indicates that Respondent was aware that Declaration of Use under Section 8 was due by June 29, 2016. *See* Declaration of James Locke ¶ 10. It seems extraordinarily convenient that Respondent would wait until the day the renewal was due to hire an attorney to file a declaration of use and not know there was a pending cancellation. Respondent is essentially arguing it completely neglected to check its trademark status before June 29, 2016, even though it knew its declaration of use was due soon and that there was a dispute with Petitioner regarding the breach of the Settlement Agreement.

It is also suspicious that a few weeks after Petitioner filed this cancellation proceeding Respondent suddenly initiated communication with the Petitioner and *claimed* that there were no “veggie chips” on the market. *See* Declaration of Kayla Jimenez ¶ 6. Respondent also agreed to provide confirmation in writing that the chips were no longer being sold, but Respondent's communication was in bad faith since it continues to sell the chips. *See* Declaration of Kayla

Jimenez ¶ 8, Exhibit B.

In addition, in its motion to set aside default judgment, Respondent, Cormorant Group LLC, contends that its address of record with the USPTO, 204 28th Street, Brooklyn, New York 11232, is its “former address,” and that 1610 Bathgate Avenue, Bronx, New York, 10457 is its “current address.” “The owner of an application or registration has a duty to maintain a current and accurate correspondence address,” yet Respondent has not changed its address with the USPTO even though Respondent claims it moved *five years ago* in 2011. TMEP § 609.03; *see* Declaration of James Locke ¶ 7. As previously mentioned, a search on the New York State Department of State database shows that Respondent’s current address is still listed as 204 28th Street, Brooklyn, New York, 11232, while Terrafina LLC, a separate entity, is listed at 1610 Bathgate Avenue, Bronx, New York, 10457. *See* Declaration of Kayla Jimenez ¶¶ 10-11, Exhibits C & D. It seems that Respondent is intentionally failing to update its “current address” to the detriment of the USPTO, the state of New York, and the Petitioner. Respondent’s conduct is willful, and at the very least, grossly negligent, or in bad faith at worst; possibly a ploy to avoid being held accountable to the terms of the Settlement Agreement.

Furthermore, the TTAB decision that the Respondent cites is distinguishable from this proceeding because Respondent was properly served at its address of record with the USPTO and the Petitioner and USPTO were not at error. In *Smart Inventions, Inc. v. TMB Products LLC*, the Board set aside default judgment because the record on its face showed that the Board and the Petitioner had not served the record owner of the involved registration. *See Smart Inventions, Inc. v. TMB Products LLC*, Cancellation No. 92043691 Board’s Decision to Set Aside Judgment, slip op. at 4 (TTAB 2006). Specifically, the original trademark owner had assigned the mark to another entity, but the Board mistakenly served the prior (not current) owner of the mark. *Id.* at

3-4. This is not the case for this proceeding. Respondent, Cormorant Group LLC, was the sole owner of the now cancelled TERRAFINA trademark, and the Petitioner and USPTO had both properly served the Respondent at its address of record at 204 28th Street, Brooklyn, New York, 11232. If the respondent's copy of the institution order was not returned as undeliverable, it is presumed to have been received by the respondent. *Careerexchange Inc. v. Corpnet Infohub Ltd.*, 80 USPQ2d 1046 (2005) (quoting *Jack Lenor Larsen, Inc. v. Chase. O. Larson, Co.*, 44 USPQ2d 1950 (TTAB 1997)). Thus, since the Petitioner and the USPTO did not fail to provide notice to the Respondent, and because it is Respondent's duty to maintain its address, Respondent's failure to answer was the result of Respondent's willful conduct and gross negligence. As such, the Board should deny the Respondent's motion to set aside default judgment.

C. The TTAB should deny Respondent's motion to set aside default judgment because Respondent does not have a meritorious defense to the petition for cancellation.

The Board also considers whether the Respondent has a meritorious defense to the action in determining a motion to vacate a default judgment for failure to answer a complaint. TBMP § 312.03. Respondent's only defense is that it was not properly served at its "current address." This argument, as mentioned above, is without merit and was caused by Respondent's own gross negligence and willful conduct. Respondent also fails to offer any meritorious defenses regarding its violation of the Settlement Agreement or Petitioner's claims in its cancellation petition.

In reality, Respondent is accusing Petitioner of properly abiding by the TFSR § 2.111(b) and TBMP § 309.02(c)(2) in serving a copy of the petition at the correspondence address of record for the Respondent in the USPTO. As further discussed below, Petitioner did everything proper according to the Board's rules. It is Respondent who failed to abide by the Board's rules and breached its agreement with Petitioner. Given the foregoing, the Respondent does not have

any meritorious defense to the petition for cancellation.

D. The TTAB should deny Respondent's motion to set aside default judgment because the Petitioner and USPTO gave proper notice to the Respondent.

Respondent's only argument to setting the judgment aside in this case is that Respondent did not receive proper notice at its "new" address. However, Respondent was properly noticed pursuant to the Board's rules. In fact, serving the documents to another address may have been improper. Is Respondent insinuating that Petitioner should have served Terra Fina LLC (an unrelated party)? Or is Respondent asking Petitioner to guess which address Respondent is at – the address listed with the USPTO and the New York Secretary of State, or an address which appears on the website for a third party company selling TERRAFINA branded veggie chips? It seems that Respondent is suggesting that cancellation petitioners become clairvoyant and serve any party whom it believes has a relationship to a respondent, rather than simply following the rules. This would not only lead to ridiculous results, but could impinge on business relationships that should not be disrupted by a third-party's cancellation.

In short, the Trademark Federal Statutes and Rules ("TFSR") state that a "Petitioner must serve a copy of the petition, including any exhibits, on the owner of record for registration..., at the correspondence address of record in the Office." TFSR § 2.111(b); TBMP § 309.02(c)(2). "To be absolutely clear, Trademark Rules 2.111(a) and (b) require that the cancellation petitioner *must* serve the owner of record for the registration at its address of record, or the appointed domestic representative at its address of record." *Jacques Moret Inc. v. Speedo Holdings B.V.*, 102 USPQ2d 1212, 1216 (TTAB 2012) (emphasis added). "The owner of an application or registration has a duty to maintain a current and accurate correspondence address." TMEP § 609.03; *see* 37 C.F.R. § 2.18(b)(1). "If, in a cancellation or opposition proceeding, the

defendant's copy of the institution order is returned to the Board as undeliverable, or the plaintiff advises the Board that the service copy was returned undeliverable, the Board will make all reasonable efforts to locate the defendant, including inquiring of the plaintiff as to the defendant's current address." TBMP § 310.02. If the respondent's copy of the institution order was not returned as undeliverable, it is presumed to have been received by the respondent. *Careerxchange Inc. v. Corpnet Infohub Ltd.*, 80 USPQ2d 1046 (2005) (quoting *Jack Lenor Larsen, Inc. v. Chase. O. Larson, Co.*, 44 USPQ2d 1950 (TTAB 1997)).

Both Petitioner and the USPTO properly served the Respondent, Cormorant Group LLC, at the address of record at 204 28th Street, Brooklyn, New York, 11232. *See* Declaration of Kayla Jimenez ¶ 5; *see also* USPTO Cancellation Notice dated March 31, 2016. There is no indication that the USPTO's notices were returned as undeliverable, and thus the petition for cancelation is presumed received by Respondent.

Moreover, Respondent had a duty to update its own address, especially if Respondent's contention that it moved offices in 2011 is true. Thus, Respondent's motion should be denied because Respondent was properly served, and in the absence of evidence showing that Respondent did not receive the notice of the cancellation from the USPTO, Respondent is presumed to have received such notice.

IV. CONCLUSION

Not only has Respondent failed to provide convincing evidence to rebut the presumption that it did not receive notice of the cancellation from the USPTO, but reopening this cancellation proceeding would substantially prejudice the Petitioner and would overlook the Respondent's willful and grossly negligent conduct. Furthermore, Respondent's motion is without merit and fails to properly demonstrate why it should be granted relief. Finally, Petitioner properly served

per the TTAB rules, and should not be penalized for following the procedures set forth by the Board (or sending notice of the cancellation to the address for service of process which is still listed on the New York Secretary of State website). Therefore, for the reasons set forth above, Petitioner respectfully requests that the Board deny Respondent's motion.

Respectfully Submitted this 5th day of August 2016,

By: /Kayla Jimenez/
Kayla Jimenez
Dana Robinson
TECHLAW LLP
P.O. Box 1416
La Jolla, CA 92038
kayla@techlawllp.com
dana@techlawllp.com
Attorneys for Petitioner

Certificate of Service

I hereby certify that I have on August 5, 2016 served the foregoing:

**PETITIONER RESPONSE OPPOSING RESPONDENT'S MOTION TO SET ASIDE
DEFAULT JUDGMENT**

Via U.S. first-class mail on the following person(s):

Ira E. Silfin, counsel for Respondent Cormorant Group LLC

Amster, Rothstein & Ebenstein LLP

90 Park Avenue, New York

New York, United States 10016

By: /s/ Kayla Jimenez

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

La Terra Fina USA, Inc.)	
)	
A Delaware Corporation)	
)	Cancellation No.: 92063448
Petitioner,)	
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v.)	
)	Registration No.: 3810927
Cormorant Group LLC)	Date of Issue: June 29, 2010
)	
A New York Corporation)	
)	
Respondent.)	
<hr style="width:40%; margin-left:0"/>)	

DECLARATION OF DANA ROBINSON IN SUPPORT OF PETITIONER'S
OPPOSITION TO RESPONDENT'S MOTION TO SET ASIDE DEFAULT JUDGMENT

I, Dana Robinson, declare as follows:

1. I am an attorney, duly admitted to practice law before Courts in the State of California. I am an attorney of record for Petitioner La Terra Fina USA, Inc. ("Petitioner") in the above-entitled action and I have personal knowledge as to the facts recited in this declaration.
2. Petitioner notified me in late 2015 that it appeared Cormorant Group LLC ("Respondent") was selling veggie chips through various retail sites, including amazon.com and terrafina.us.
3. On January 4, 2016, I sent a letter on behalf of Petitioner via certified U.S. mail to Respondent stating that Respondent was in violation of the terms of the settlement agreement Respondent executed with Petitioner on November 18, 2010 (the "Settlement Agreement"). The letter was sent to Respondent's to same address that was listed in the Settlement

Agreement and the address of record with the USPTO, which is 204 28th Street Brooklyn, NY 11232. A true and correct copy of the January 4, 2016 letter of notification is attached as Exhibit 1.

4. On January 26, 2016, I sent another letter of notification on behalf of Petitioner via certified U.S. mail to Terrafina LLC, the apparent owner of the terrafina.us website based on the website's contact information. The letter was sent to 1610 Bathgate Avenue New York, NY 10457, the address listed for Terrafina LLC on terrafina.us. A true and correct copy of the January 26, 2016 letter of notification is attached as Exhibit 2
5. There was no mention of Cormorant Group LLC on any of the contents on Terrafina LLC's website. A true and correct copy of the terrafina.us website is attached as Exhibit 3.
6. At no point in time did the Respondent inform me of a change of address or indicate that its business was no longer at its address of record with the USPTO or the Settlement Agreement.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on this 5th day of August 2016.

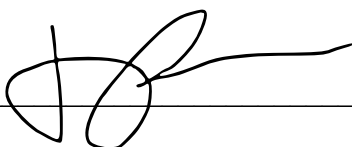
By:  _____
Dana Robinson

Exhibit 1

DANA B. ROBINSON, Esq.
E-MAIL: DANA@TECHLAWLLP.COM
TEL (858) 488-2545
FAX (858) 777-3347



P.O. Box 1416
LA JOLLA, CA 92038
WWW.TECHLAWLLP.COM

January 4, 2016

Via Certified U.S. Mail

Cormorant Group LLC
c/o James Locke
204 28th Street
Brooklyn, NY 11232

Re: Violation of TERRAFINA Settlement Agreement

Dear Mr. Locke:

We represent La Terra Fina USA, Inc. ("LTF"). It has come to our attention that Cormorant Group LLC ("Cormorant") is in violation of the terms of the settlement agreement Cormorant executed with LTF on November 18, 2010 (the "Settlement Agreement"). A copy of the Settlement Agreement is enclosed with this letter for your reference.

The Settlement Agreement addresses, in part, the opposition LTF filed against Cormorant's TERRAFINA trademark application (Serial No. 78958154). The terms of the Settlement Agreement allow Cormorant to use TERRAFINA "on or in connection with roasted nuts, flavored nuts, roasted seeds, fruit and nut mixes, trail mixes, confections, including brittles, crunch bards, chocolate covered nuts, chocolate covered dried fruits, raw nuts, dried fruits, raw seeds, grains, pulses and coffee." However, Section 1 of the Settlement Agreement explicitly prohibits Cormorant from "using the TERRAFINA Mark on or in connection with any other goods or services," other than those specifically listed in the Settlement Agreement.

Cormorant is violating the terms of Clause 1 of the Settlement Agreement by selling "veggie chips" under the TERRAFINA brand. See www.terrafin.us. Veggie chips are not listed as a permitted item in Settlement Agreement, and thus Cormorant may not offer the veggie chips for sale under the TERRAFINA name.

This letter serves as notice under Section 11 of the Settlement Agreement, which provides that Cormorant must cure its breach within thirty (30) business days after receipt of this

letter. You can reach me by email, dana@techlawllp.com, to discuss this matter further. Nothing herein shall constitute a waiver of any kind nor prejudice any of our client's rights or remedies.

Very truly yours,

/s/ Dana B. Robinson

Dana B. Robinson

cc: Rogelio J. Carrasquillo
Gibbons, P.C.
One Pennsylvania Plaza
37th Floor
New York, NY 10119

cc: John J. Driscoll
Windels Marx Lane & Mittendorf
Via email john.driscoll@tklaw.com

Exhibit 2

DANA B. ROBINSON, Esq.
E-MAIL: DANA@TECHLAWLLP.COM
TEL (858) 488-2545
FAX (858) 777-3347



TECHLAW LLP
P.O. Box 1416
LA JOLLA, CA 92038
WWW.TECHLAWLLP.COM

January 26, 2016

Via Certified U.S. Mail

Terrafina LLC
Cormorant Group LLC
1610 Bathgate Avenue
New York, NY 10457

Re: Violation of TERRAFINA Settlement Agreement

To Whom It May Concern:

We represent La Terra Fina USA, Inc. ("LTF"). It has come to our attention that Cormorant Group LLC ("Cormorant") is in violation of the terms of the settlement agreement Cormorant executed with LTF on November 18, 2010 (the "Settlement Agreement").

The Settlement Agreement addresses, in part, the opposition LTF filed against Cormorant's TERRAFINA trademark application (Serial No. 78958154). The terms of the Settlement Agreement allow Cormorant to use TERRAFINA "on or in connection with roasted nuts, flavored nuts, roasted seeds, fruit and nut mixes, trail mixes, confections, including brittles, crunch bards, chocolate covered nuts, chocolate covered dried fruits, raw nuts, dried fruits, raw seeds, grains, pulses and coffee." However, Section 1 of the Settlement Agreement explicitly prohibits Cormorant (and its parents, affiliates, subsidiaries, successors and assigns) from "using the TERRAFINA Mark on or in connection with any other goods or services," other than those specifically listed in the Settlement Agreement.

Cormorant is violating the terms of Clause 1 of the Settlement Agreement by selling "veggie chips" under the TERRAFINA brand. See www.terrafin.us. Veggie chips are not listed as a permitted item in Settlement Agreement, and thus Cormorant may not offer the veggie chips for sale under the TERRAFINA name.

This letter serves as notice under Section 11 of the Settlement Agreement, which provides that Cormorant must cure its breach within thirty (30) business days after receipt of this

letter. Please let us know if you cannot locate a copy of the Settlement Agreement, and we will send it to you.

You can reach me by email, dana@techlawllp.com, to discuss this matter further. Nothing herein shall constitute a waiver of any kind nor prejudice any of our client's rights or remedies.

Very truly yours,

/s/ Dana B. Robinson

Dana B. Robinson

cc: Rogelio J. Carrasquillo
Gibbons, P.C.
One Pennsylvania Plaza
37th Floor
New York, NY 10119

Exhibit 3



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feedback

We love hearing from our customers, so if you have an idea or suggestion, or you'd just like to let us know how we're doing, then please contact us at feedback@terrafina.us

if you'd like to get in touch

Terrafina LLC
Bathgate Industrial Estate
1610 Bathgate Avenue
The Bronx
New York, NY 10457
USA

e: hello@terrafina.us
t: +1 718-299-8290
f: +1 718-299-8291

If you're interested in stocking our products for the first time, please fill in the form below:

name *
company *
email *
phone number *
postal address
post code
country
how did you hear about us
comments

*required fields

submit

our brands





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our story

Terraфина was born in 2005 when, in true entrepreneurial spirit, we seized a window of opportunity in the market and unleashed our passion for healthy snacks.

retailers & wholesalers

We pride ourselves on collaborating with our wholesalers and retailers to deliver innovation, not only with our products, but also with our packaging.

whats new

Keep up to date with all things Terraфина! See our news and our blog for more info.

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our brands

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

La Terra Fina USA, Inc.)	
)	
A Delaware Corporation)	
)	Cancellation No.: 92063448
Petitioner,)	
)	
v.)	
)	Registration No.: 3810927
Cormorant Group LLC)	Date of Issue: June 29, 2010
)	
A New York Corporation)	
)	
Respondent.)	
<hr style="width:40%; margin-left:0"/>)	

DECLARATION OF KAYLA JIMENEZ IN SUPPORT OF PETITIONER'S
OPPOSITION TO RESPONDENT'S MOTION TO SET ASIDE DEFAULT JUDGMENT

I, Kayla Jimenez, declare as follows:

1. I am an attorney, duly admitted to practice law before Courts in the State of California. I am an attorney of record for Petitioner La Terra Fina USA, Inc. ("Petitioner") in the above-entitled action and I have personal knowledge as to the facts recited in this declaration.
2. On February 9, 2016, I sent an email to the secretary for James Locke, the president of Respondent Cormorant Group LLC ("Respondent"), requesting to schedule a phone conference after receiving several missed calls from Mr. Locke. A true and correct copy of this email is attached as Exhibit A.
3. I sent the February 9, 2016 email to Mr. Locke's secretary because when I tried returning Mr. Locke's calls, Mr. Locke was unavailable and the secretary would not give me Mr. Locke's email

address to set up a time for a telephone conference. However, the secretary requested that I email her and she would forward the email to Mr. Locke. I did not receive a response to this email until April 18, 2016.

4. On March 29, 2016, I filed a Petition for Cancellation of Respondent's registration with the USPTO on behalf of the Petitioner.
5. I mailed the petition for cancellation to Respondent's address on record with the USPTO at 204 28th Street, Brooklyn, NY 11232.
6. On April 18, 2016, Mr. Locke called on behalf of Respondent and stated that Respondent had no veggie chips on the market under the TERRAFINA brand and that any photos of the veggie chips would be taken down. I requested that the Respondent provide such confirmation in writing.
7. Respondent did not provide the confirmation in writing and never contacted me again.
8. Respondent continues to violate the Settlement Agreement by using the TERRAFINA brand on veggie chips and sesame sticks. Respondent's prior and current violation of the Settlement Agreement are attached as Exhibit B.
9. On August 4, 2016, I went to the New York State Department of State website on http://www.dos.ny.gov/corps/bus_entity_search.html. The current listed address for Cormorant Group LLC is 204 28th Street, Brooklyn, NY 11232. A true and correct copy of the entity information from the New York State Department of State website is attached as Exhibit C.
10. The address for Terrafina LLC is 1610 Bathgate Avenue, New York, NY 10457, and it is listed as a separate entity from Cormorant Group LLC on the New York Secretary of State's website. A true and correct copy of the entity information from the New York State Department of State website is attached as Exhibit D.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration is executed on this 5th day of August 2016.


By: 
Kayla Jimenez

Exhibit A



Kayla Jimenez <kayla@techlawllp.com>

Telephone call with TechLaw LLP re: La Terra Fina

1 message

Kayla Jimenez <kayla@techlawllp.com>
To: a.aygun@terrafina.us
Cc: Dana Robinson <dana@techlawllp.com>

Tue, Feb 9, 2016 at 9:45 AM

Hello Mr. Locke,

I am Mr. Robinson's associate at TechLaw LLP. We have been playing phone tag, so I think it is best to schedule the call in advance. Dana and I are both available to speak about the La Terra Fina letter (dated 1/26/16) at 11am PST Wednesday, February 10th.

I also have this afternoon (1pm PST - 4pm PST) free to take a call. You can reach me on my direct line at [858-952-0998](tel:858-952-0998).

Please let me know your availability so we can set something up.

Best,

Kayla Jimenez
Associate Attorney
TechLaw LLP
P.O. Box 1416
La Jolla, CA 92038
kayla@techlawllp.com

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Exhibit B


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our products

Our extensive range means we can satisfy everyone's tastes, and as always, product quality lies at the heart of our offering.

being sustainable

We're determined to have a healthy impact on the world around us. That's why sustainability and ethical trading are high on our agenda.

get in touch

We love hearing from our customers, so if you have an idea or suggestion, please contact us.

tub program

Our range of tubs gives you choice and flexibility.

Our tubs are made using 50% post-consumer recycled (PCR) plastic PET bottles which reduces the use of virgin raw materials and the amount of refuse going to waste streams. And with 50% PCR messaging engraved on the bottom of each tub, your customers will understand that you're as committed to the environment as they are.

small tub program



Container Sizes	5oz	8oz	12oz	16oz	24oz	32oz
Case Pack:	25	24	16	12	8	6
Case Dimensions (in.):	9.5 x 9.5 x 8.25	9.5 x 9.5 x 8.25	9.5 x 9.5 x 8.25	9.5 x 9.5 x 8.25	9.5 x 9.5 x 8.25	9.5 x 9.5 x 8.25
Cases Per Layer:	20 (16)	20 (16)	20 (16)	20 (16)	20 (16)	20 (16)
Layers Per Pallet:	5 (6)	5 (6)	5 (6)	5 (6)	5 (6)	5 (6)
Cases Per Pallet:	100 (96)	100 (96)	100 (96)	100 (96)	100 (96)	100 (96)

Numbers in parenthesis are alternate pallet layouts.

large tub program

crafted with care right here in the usa



Container Sizes	18oz	29oz	34oz	44oz	32oz 2C	32oz 4C
Case Pack:	12	12	8	8	12	12
Case Dimensions (in.):	14.5 x 14.5 x 7.5	14.5 x 14.5 x 7.5	14.5 x 14.5 x 7.5	14.5 x 14.5 x 7.5	14.5 x 14.5 x 7.5	14.5 x 14.5 x 7.5
Cases Per Layer:	9	9	9	9	9	9
Layers Per Pallet:	7	7	7	7	7	7
Cases Per Pallet:	63	63	63	63	63	63
Shipper:	Yes	Yes	Yes	No	Yes	Yes
Compartments:	No	No	No	No	2	4

our brands

Just 5 days until Prime Day!

amazon
Try Prime

Grocery & Gourmet F...

NEW & INTERESTING FINDS
FROM ACROSS AMAZON

Departments ▾

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Today's Deals

Gift Cards & Registry

Sell

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Grocery

Deals

Snacks ▾

Breakfast ▾

Beverages ▾

Cooking Staples ▾

Baby Food ▾

Candy & Chocolate ▾

Specialty Diets ▾

Prime Pantry ▾

Grocery & Gourmet Food ▸ Produce ▸ Fresh Vegetables ▸ Sea Vegetables

Terraflina Vegetable Chips-5 oz from Terraflina

Be the first to review this item

Price: **\$6.79** (\$1.36 / oz) + \$4.49 shipping**Only 4 left in stock - order soon.** Ships from and sold by
Vine.com (Quidsi Retail, an Amazon company).**Get it Sooner.** Estimated delivery on **July 11 - 14** when you choose
Expedited Shipping at checkout.

Ship to: LAKESIDE, CA 92040 ▾

Qty: 1 ▾

Turn on 1-click ordering



Add to Cart

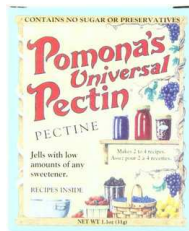
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Have one to sell?

Sell on Amazon

Share

Customers Also Shopped For

Pomona's Universal Pectin,
1 Ounce Box (Pack of 6)

★★★★★ 165

\$29.95 ✓Prime

Sponsored Products Related To This Item (What's this?)

ORGANIC PROTEIN
POWDER Plant-Based
(Fair Trade Creamy
Chocolate Fudge) by...

★★★★★ 43

\$29.95 ✓Prime

krispeas Baked Falafel
Chips, Hot & Spicy,
Crunchy Vegan & Gluten
Free Snack Made From...

★★★★★ 63

\$6.99 ✓Prime

Bare Natural Apple
Chips, Variety Pack,
Gluten Free + Baked, 1.7
Ounce , 7 Count

★★★★★ 520

\$19.72 ✓Prime

Enjoy Life Plentils Single-
Serve Variety Pack,
Gluten, Dairy, Nut & Soy
Free, 0.8-Ounce (Pack...

★★★★★ 230

\$26.74 ✓Prime

Mother Earth Products
Dried Carrots, 1 Full
Quart

★★★★★ 76

\$10.99 ✓Prime

Nat
Bee
Bag

\$15

Ad feedback

Prime Video
Instant streaming of movies and TV shows

Start your free month

Departments ▾
Your Amazon.com
Today's Deals
Gift Cards & Registry
Sell
Hello, Sign in
Your Account ▾
Try Prime ▾
Lists ▾
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Grocery ▾
Deals
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Breakfast ▾
Beverages ▾
Cooking Staples ▾
Baby Food ▾
Candy & Chocolate ▾
Specialty Diets ▾
Prime Pantry ▾

Grocery & Gourmet Food › Produce › Fresh Vegetables › Sea Vegetables

Terrafina Salted Sesame Sticks-6 oz from Terrafina

[Be the first to review this item](#)Price: **\$3.94** (\$0.66 / oz) + \$4.99 shipping**In Stock.** Ships from and sold by [Vine.com](#) (Quidsi Retail, an Amazon company).**Get it Sooner.** Estimated delivery on **Aug. 5 - 10** when you choose **Expedited Shipping** at checkout.

Ship to: SANDIEGO, CA 92101 ▾

Qty: 1 ▾

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- 4.8 oz

★★★★☆ 37

\$8.47

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THE **BEST AND MOST POPULAR** ONLINE PREMIUM STORE SINCE 2007

Current Price / Promo ends in 36 minutes, 59 seconds.

[Home](#) → [Terafina Vegetable Chips - 5 oz](#)



Terafina Vegetable Chips - 5 oz

[293 Review\(s\)](#) | [Add Your Review](#)

Terafina Vegetable Chips - 5 oz, Terafina TER-030, Pack of eight, 5. Gluten "free. Ounce tubs (total of 40 ounces).

Original vegetable chips.

SKU: SEM3493s5GHGyWwaoeMYyaqoOO

\$27.76

Availability: In stock

Qty:

[Add to Cart](#)



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Brand: Terafina

We will send this product in **1 to 6 days**. Free Shipping Worldwide. Shipping time may vary depending on the address.

Products may be Shipped and Fulfilled From it's Overseas Principal / Warehouses / Nearest local authorized Re-seller. (e.g. USA/UK/Singapore/etc).

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\$0.00

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TerraFina Vegetable Chips

8 oz

Price: \$6.69

Unit Price: \$0.84/oz

[Add](#)**SKU:** 847938072552

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Terra Chips Grand Sales

Saturday, January 21, 2012

TerraFina Vegetable Chips, 5-Ounce Tubs (Pack of 8)

TerraFina Vegetable Chips, 5-Ounce Tubs (Pack of 8) Review



Blog Archive

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► **May** (1)

► **April** (7)

► **March** (11)

▼ **January** (20)

**Terra Chips Pesto & Smoked
Mozzarella Kettle Chip ...**

**Terra Chips Candied Sweet
Potato Crinkles (12x7 OZ...**

**Welch's Fruit Snacks, Mixed
Fruit, Fat Free Snacks...**

**TerraFina Vegetable Chips, 5-
Ounce Tubs (Pack of 8...**

**Terra Exotic Vegetable Chips
Mediterranean -- 7.5 ...**

**TERRA SWEET POTATO
KRINKLE CHIPS (6X6OZ)**

**Terra Plain Sweet Potato
Chips -- 6 oz**

**Terra Exotic Vegetable Chips
Mediterranean -- 7.5 ...**

**Terra Chips, Chip Sweet Pto
Sea Salt, 6-Ounce (12 ...**

**Terra Original Exotic Veggie
Chips (12x5oz)**

**Terra Chips Sea Salt Terra
Sweet (12x5 OZ)**

Exhibit C

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through August 3, 2016.

Selected Entity Name: CORMORANT GROUP, L.L.C.

Selected Entity Status Information

Current Entity Name: CORMORANT GROUP, L.L.C.

DOS ID #: 3223642

Initial DOS Filing Date: JUNE 27, 2005

County: QUEENS

Jurisdiction: NEW YORK

Entity Type: DOMESTIC LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

CORMORANT GROUP, L.L.C.

EMRE IMAMOGLU

204 28TH ST

BROOKLYN, NEW YORK, 11232

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
No Information Available		

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JUN 27, 2005	Actual	CORMORANT GROUP, L.L.C.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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Exhibit D

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through August 3, 2016.

Selected Entity Name: TERRAFINA, L.L.C.

Selected Entity Status Information

Current Entity Name: TERRAFINA, L.L.C.

DOS ID #: 3223448

Initial DOS Filing Date: JUNE 24, 2005

County: QUEENS

Jurisdiction: NEW YORK

Entity Type: DOMESTIC LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

TERRAFINA, L.L.C.

1610 BATHGATE AVENUE

BRONX, NEW YORK, 10457

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by [viewing the certificate](#).

***Stock Information**

of Shares

Type of Stock

\$ Value per Share

No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JUN 24, 2005	Actual	TERRAFINA, L.L.C.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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